



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 23, 2004

Ms. Sara Hoglund, CPPB
Contract Administrator
Collin County
200 South McDonald, Suite 230
McKinney, Texas 75069

OR2004-1299

Dear Ms. Hoglund:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196595.

Collin County (the "county") received a request for the "top 6 vendors bids" pertaining to a specified Request for Proposals. Although you defer to two of the interested third parties who may have a proprietary interest in the requested information to raise arguments for withholding the requested information, you indicate that this information may be subject to third party confidentiality claims. Pursuant to section 552.305(d) of the Government Code, the county notified two of the interested third parties, EADS Telecom ("EADS") and Southwest Century Communications ("Southwest"), of the county's receipt of the request and of each company's right to submit arguments to us as to why any portion of the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act (the "Act") in certain circumstances). We have reviewed the submitted information.

Initially, we note that the county did not submit to us any responsive information pertaining to any other parties who may have a proprietary interest in the requested information. We, therefore, presume that the county has already provided the requestor with all other responsive information to the extent that it existed on the date of the county's receipt of this request for information. If not, then the county must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

Next, we note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, EADS and Southwest have not submitted comments to us explaining why any portion of the submitted information relating to these parties should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to each of these parties would implicate their proprietary interests. *See, e.g.*, Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the county may not withhold any portion of the submitted information relating to these parties on the basis of any proprietary interest that they may have in the information.

Finally, we note that portions of EADS' and Southwest's bid proposals are copyrighted. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making such copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the county must release the entirety of the submitted information to the requestor. However, in doing so, the county must comply with the applicable copyright law for any copyrighted information in EADS' and Southwest's proposals.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

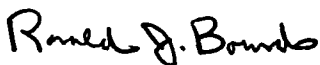
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 196595

Enc. Submitted documents

c: Mr. Tommy Tatum
Avaya Inc.
Public Sector Solution Sales
1111 Freeport Parkway
Coppell, Texas 75019
(w/o enclosures)

Mr. Kevin Lambert
EADS Telecom
5057 Keller Springs Road
Addison, Texas 75004
(w/o enclosures)

Mr. Dale Joaquin
Regional Sales Manager
Southwest Century Communications
1713 Runyan Avenue
Houston, Texas 77039
(w/o enclosures)